

City Council Minutes
Tuesday, November 26, 2019

On the 26th day of November 2019, at 6:30 p.m., the City Council of the City of Hurst, Texas, convened in Regular Meeting at City Hall, 1505 Precinct Line Road, Hurst, Texas, with the following members present:

Henry Wilson	)	Mayor
Larry Kitchens	)	Mayor Pro Tem
David Booe	)	Councilmembers
Bill McLendon)	
Jon McKenzie)	
Cindy Shepard)	
Clay Caruthers	)	City Manager
Matthew Boyle	)	Assistant City Attorney
Rita Frick	)	City Secretary
Clayton Fulton	)	Assistant City Manager
Malaika Marion Farmer	)	Assistant City Manager
Robert Wallace	)	Building Official
Michelle Lazo	)	Executive Director Planning and Development
Kyle Gordon	)	Executive Director Community Services

With the following Councilmembers absent: Cathy Thompson, constituting a quorum; at which time, the following business was transacted:

The meeting was called to order at 6:30 p.m.

Mayor Pro Tem Kitchens gave the Invocation.

The Pledge of Allegiance was given. The Texas Pledge was given.

CONSENT AGENDA

1. Considered approval of the minutes for the November 12, 2019 City Council meetings.
2. Considered Ordinance 2430, second reading, SP-19-11 Novak Motors, a site plan for signage only on Lot A1, Block 1 Oakwood Park Addition being .30 acre located at 160 W. Bedford Euless Road.

Councilmember Kitchens moved to approve the consent agenda. Motion seconded by Councilmember Booe. Motion prevailed by the following vote:

Ayes: Councilmembers Booe, Kitchens, McKenzie, McLendon and Shepard
No: None

PUBLIC HEARING(S) AND RELATED ITEM(S)

3. Conducted a Public Hearing and consider ordering the repair, removal or demolition of property located at 450 E. Hurst Blvd, Hurst, Texas; Lot A3, Block 14, of the Holder Estates subdivision (Dakota Place Apartments) and to consider the possible levying of civil penalties.

Mayor Wilson announced a public hearing and consider ordering the repair, removal or demolition of property located at 450 E. Hurst Blvd, Hurst, Texas; Lot A3, Block 14, of the Holder Estates subdivision (Dakota Place Apartments) and to consider the possible levying of civil penalties and recognized City Attorney Matthew Boyle who stated this item is a follow up to the September 24, 2019 order requiring repair or demolition of the property with the established deadline of October 24, 2019. He stated it is now 33 days past the deadline and the repairs have not been made. He noted the most significant issue remains the roofs on the buildings with violations dating back to 2016 and no permit has been successfully pulled in spite of the multiple meetings with the owner, owner's attorney and contractor during this timeline. Mr. Boyle stated since the time a lawsuit was filed, nine citations have been issued and yet we still stand before Council with noncompliance. As such, the attorney recommends Council consider civil penalties against the owner and to make them conditional.

Mayor Wilson recognized Charles Mercer, 6101 Terrace Oaks Lane, Fort Worth, who provided the Council a document of information. Mr. Mercer noted that, in 2016, the City wanted us to replace the roof structure, that the decision was made by Richard Clark, not a structural engineer. He stated a structural engineer said the structures are good, but the City did not agree. That the engineer put a swimming pool on the roof, and it passed with flying colors. Mr. Mercer stated he received tickets, and when the roof passed the test, the tickets were dropped. Mr. Mercer stated Vince King let it go and dropped it. It was determined the structure was sound. He stated, in 2018, when some drips came through the roof, he was cited and ordered to permit the roof, which was filed April 6, 2018. They removed an 80-year old resident from her apartment. He stated he thought the City would expedite the permit, since the tenant left all her belongings in her home and he put her in another unit. He stated October 15 was the last time they asked for anything after the April 6 filing. Mr. Mercer stated delays were caused by the City. He stated he spoke to Michelle Lazo and the city manager and the city manager would not talk because the city attorney was involved. He stated the last item he gave Council is an email to Michelle Lazo dated December 5, a month after he provided everything the City requested and he received no response to the emails. Mr. Mercer stated the roof is not leaking, the code is that the roof has to be leak proof. Mr. Mercer stated the roof has a 10 year guarantee and moisture was found in the insulation, no problem with the roof. He stated he agreed to remove the roof and when he submitted the plans, an engineer from the City added to remove all decking and that he will have to have a metal frame with decking. He stated that was a change by the City, or he would have a permit now. Mr. Mercer expressed his concerns regarding city inspections being vague and not able to know what is wanted. That there are no regulations for the AC service required by the City and that all violations that he was told about were finished. Mr. Mercer also

expressed concern inspectors would not show him what the violations were and commented on the amount of mold discovered and regulations regarding mold. He stated all violations on interior that we were told about we finished. Exterior inspections were done without any staff members present. He stated there may be violations no one has told him about on the exterior. He stated the roof shows 10% moisture and 90% is good. He stated the Constitution 5th amendment of the United States says government cannot take away property without due process and that you would think he has a right to repair. He indicated the City is not following the engineer they hired. He stated we are going to litigation and feels things will come out in litigation. He stated he had a tenant call today to show support and that his tenants are nervous not knowing if the building will be demolished and that he has quite a few tenants who could not afford to move, that they live paycheck to paycheck. He stated the City found another apartment that had old damage, and rather than the tenant move out, he tried to apply for a permit, and he was told they are not taking any more permits from me. He stated there have been too many things, delays caused by the City and the delays, on the roof, are on the City, not him. He stated he is hoping the Council will postpone until litigation presented and that he has spent a lot of money on the property, over \$100,000 this year, and by the time done, no idea.

Mayor Wilson recognized Milli Berneck, 450 E. Hurst Boulevard, Apartment 122, who stated she has lived in Hurst over twenty years and Dakota Place Apartments for 6 years. She stated there was a lot of work done on the apartment complex last year and she has no problem with her apartment. She stated she does not have a vehicle to move and that she tried to talk to people in Hurst but that no one got back to her. Mr. Berneck stated some tenant left not knowing anything.

There being no else to speak, Mayor Wilson closed the public hearing.

In response to Councilmember Kitchen's questions, Mr. Boyle stated the issues identified have not been satisfied, and in particular the roof. He stated, at the property owners request and demand, the City obtained an independent and third party review of the roof and engaged Childress Engineering Services who made an onsite inspection of the property January 2019, Thereafter they issued a written report, which was provided to the Council as part of their initial consideration of this case. The February 2019 report identified serious outstanding structural issues to the roof, and indicated the necessity for immediate replacement of the roof on building 2. The roof on building 2 has not been replaced and no other identified necessary repairs been made to the roofs on buildings 1, 3, and 4. And in addition, between the time of September 24 and your last meeting, staff had the opportunity to, reinspect, the property as part of the electrical work inspections, which reveals additional deficiencies to the roof, which merited further repairs on buildings 3 and 4. To go back to 2016 and 2017, is irrelevant, given the Childress Engineering inspection in January 2019 and February 2019 reports. Not only have the repairs not been made, there is not a valid building permit, and it was made clear the requirements of that permit to the property owner and his contractor. Mr. Mercer expressed his opinion regarding the roof structure and Mayor Wilson advised the public hearing had been closed. In response to Councilmember Kitchens questions regarding

permits, Mr. Boyle stated the repairs require a permit, and that illegal and unpermitted work has been done and the owner was notified of the requirement. Councilmember Kitchens noted that permits are required to make sure all compliance is met during the various phases. He stated it is not the Council's position or the City's position to demolish property. The Council is interested in insuring Dakota Place Apartments is a place that provides for the health, safety and welfare of those living in the apartments.

Councilmember Kitchens moved to approve an Order assessing conditional civil penalties against the owner(s) of the Dakota Place Apartments in the amount of \$500.00 per day for a total amount of \$16,500.00. Motion seconded by Councilmember Shepard. Motion prevailed by the following vote:

Ayes: Councilmembers Booe, Kitchens, McKenzie, McLendon and Shepard

No: None

Councilmember McKenzie left the meeting at 7:00 p.m.

RESOLUTION(S)

4. Considered approval of Resolution 1753 authorizing the City of Euless to serve as the sponsoring agency to prepare and file the Solid Waste Pass-Through Grant Application on behalf of the City of Hurst.

Mayor Wilson recognized Fire Chief David Palla who reviewed the proposed grant application noting the proposed Resolution authorizing the City of Euless to serve as the sponsoring agency to prepare and file the Solid Waste Pass-Through Grant Application on behalf of the City. He stated the management of a disaster recovery process includes steps leading to to normalcy as quickly as possible. Chief Palla reviewed the benefits of the plan and stated the contracts will help augment the City's daily waste contractors. He reviewed key dates to the application process and stated the contracts will provide a quicker recovery.

Councilmember Booe moved to approve Resolution 1753 authorizing the City of Euless to serve as the sponsoring agency to prepare and file the Solid Waste Pass-Through Grant application on behalf of the City of Hurst. Motion seconded by Councilmember Shepard. Motion prevailed by the following vote:

Ayes: Councilmembers Booe, Kitchens, McLendon and Shepard

No: None

OTHER BUSINESS

5. Considered authorizing the city manager to enter into a Lease Agreement and Memorandum of Lease Agreement with Blue Sky Towers III, LLC, for a ground lease and construction of a radio/communications cell tower at 1235 Hurstview Drive.

Mayor Wilson recognized Executive Director of Public Works Greg Dickens who provided the City Secretary with a revised contract document and reviewed the lease agreement for a 125' high single-pylon radio and communications cell tower. He stated the ground lease is a 50'x 50' area on the City of Hurst water plant site located at 1235 Hurstview Drive and the existing 80' tower, which is not being used will be removed. He explained the design of the tower allows for it to buckle and collapse within the 50' square in case of failure. Mr. Dickens stated the lease is for an initial period of 60 months with an option of four successive five-year automatic renewals, and the City will receive a one-time \$500 payment upon execution of the agreements and, thereafter, payments of \$1,200 each month for the term. Mr. Dickens stated the contract allows for the HAM radio operator use, which is beneficial to the City. In response to Councilmember Kitchens' questions regarding notice and right to remove the tower, Mr. Dickens stated he believed there is a 30-day notice requirement.

Councilmember Shepard moved to authorize the city manager to enter into a Lease Agreement and Memorandum of Lease Agreement with Blue Sky Towers III, LLC, for a period of 60 months, with four optional automatic extensions, each having a duration of five years. Motion seconded by Councilmember Booe. Motion prevailed by the following vote:

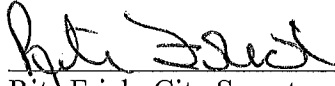
Ayes: Councilmembers Booe, Kitchens, McLendon and Shepard

No: None

6. Considered authorizing the city manager to enter into a letter engagement agreement with Bickerstaff Heath Delgado Acosta LLP for representation of the City in SB 1004/SB1152 litigation regarding right-of-way acquisition.

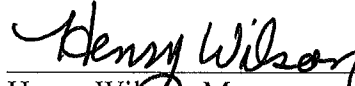
Mayor Wilson recognized Assistant City Manager Clayton Fulton who reviewed the proposed Letter Engagement Agreement with Bickerstaff Heath Delgado Acosta, LLP, for representation of the City in SB 1004/SB1152 litigation regarding right-of-way acquisition. Mr. Fulton reviewed legislation passed in 2017 restricting a City's ability to collect fees and 2019 legislation effectively eliminating half of franchise fees, which resulted in litigation. He explained the basis of the lawsuit, that approximately 50 cities joined the suit and the legislation results in an approximation \$300,000 deficit. City Manager Caruthers noted the City's cost of approximately \$5,600 to join the lawsuit does not obligate the City to contribute more and the City can opt out of the lawsuit. Councilmember Kitchens noted his support for technology, but that when the state constitution was passed in 1876, it was written so cities can't give away land, which is the basis for this lawsuit, which states the action is unconstitutional especially to a for profit entity. Also noted were contributions by the telecommunication industry to the authors of the state legislation.

ATTEST:

A handwritten signature in cursive script, appearing to read "Rita Frick", written over a horizontal line.

Rita Frick, City Secretary

APPROVED:

A handwritten signature in cursive script, appearing to read "Henry Wilson", written over a horizontal line.

Henry Wilson, Mayor